

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ERIC L. JEFFRIES,)	CASE NO. C-1-02-351
	:	
Plaintiff,)	JUDGE BECKWITH
	:	Magistrate Judge Hogan
v.)	
	:	
CENTRE LIFE INSURANCE CO.,)	
	:	
Defendant.)	

**PLAINTIFF'S MOTION *IN LIMINE* TO EXCLUDE
UNPRODUCED DOCUMENTS/INFORMATION**

Defendant should be precluded from offering into evidence any information not produced in the discovery phase of the case. The issue addressed in this Motion is defendant's willful withholding of discoverable information it intends to use at trial. At the same time a motion is pending before the Court regarding defendant's willful withholding of its financial information which plaintiff needs for trial. Defendant's conduct is extraordinary. A memorandum in support is attached.

Respectfully submitted,

OF COUNSEL

GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
(513) 621-6464

/s Michael A. Roberts
Michael A. Roberts, Esq. (0047129)
GRAYDON HEAD & RITCHEY LLP
511 Walnut Street, Suite 1900
Cincinnati, Ohio 45202
(513) 629-2799
(513) 651-3836 (fax)
email: mroberts@graydon.com

MEMORANDUM IN SUPPORT

Apparently not believing in the strength of its case and still attempting to find information on which it can deny Mr. Jeffries' Claim, the defendant has apparently engaged in a 20th secret surveillance of Mr. Jeffries but has not and refuses to provide the information to plaintiff.

During the course of today's April 13, 2004, Final Pretrial Conference, defendant's counsel stated that he has information he intends to use at trial which he has not produced and will not produce until after plaintiff and his wife have testified at trial. This is trial by ambush.

In addition, prior to today, defendant's counsel has denied possessing such information:

- On March 17, 2004, less than 4 weeks ago, plaintiff's counsel advised defendant to cease its constant surveillance of Mr. Jeffries and produce the surveillance it had recently obtained – [the Court already ordered – twice – that defendant produce all surveillance] (*Exh. 1*);
- On March 22, 2004, Counsel for the defendant represented that his client had as of that date not conducted any surveillance of Mr. Jeffries that was not contained in the Claims File; *Id.*
- On April 7, 2004, seeing unproduced information identified as Exhibits on defendant's proposed Joint Final Pretrial Order, plaintiff again requested the production of the recent surveillance information; *Id.*
- Later that day, in response to plaintiff's counsel's personal demand for the information at the conduct of the Summary Jury Trial, the defendant provided plaintiff with a list of go-kart events in which plaintiff's children were participants and said "that's all there is."

Contrary to these assertions made by defendant's counsel and notwithstanding this Court's unambiguous orders that surveillance information be produced – defendant's counsel made it clear again that he will apply his own rules of procedure and not produce information he has until after plaintiff presents its case at trial. Defendant counsel's desire and plan to

ambush plaintiff is unethical, contrary to law, and counter to hundreds of years of jurisprudence and due process. Defendant should not just be precluded from offering the unproduced information at trial but should be sanctioned for his underhanded and unethical behavior – including his deceitful representations to plaintiff's counsel from March 17, 2004, through today.

Respectfully submitted,

OF COUNSEL

GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
(513) 621-6464

/s Michael A. Roberts
Michael A. Roberts, Esq. (0047129)
GRAYDON HEAD & RITCHEY LLP
511 Walnut Street, Suite 1900
Cincinnati, Ohio 45202
(513) 629-2799
(513) 651-3836 (fax)
email:mroberts@graydon.com

CERTIFICATE OF SERVICE

The foregoing was electronically filed and thereby served on William R. Ellis, Esq., Wood & Lamping LLP, 600 Vine Street, Suite 2500, Cincinnati, Ohio 45202, this 13th day of April, 2004.

/s Michael A. Roberts